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No. 23614

FILED IN THE SUPREME COURT OF THE STATE OF COLORADO
DEC 2 [illegible]

IN THE SUPREME COURT OF THE STATE OF COLORADO

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO; SHERIDAN SCHOOL DISTRICT NO. 2, ARAPAHOE COUNTY, COLORADO, AND BOB D. McAFEE, EDNA JEANNE McAFEE, JAMES E. JACKSON, DENMER A. WELLS, JR., DOROTHY M. WELLS, JACK O. BANKS, DOROTHY BANKS, JOHN L. DORLAC, JR., AND JUANITA J. DORLAC,

Plaintiffs in Error,

vs.

THE CITY AND COUNTY OF DENVER, A MUNICIPAL CORPORATION; THE CITY COUNCIL OF THE CITY AND COUNTY OF DENVER; ROBERT B. KEATING, JOHN F. KELLY, IRVING S. HOOK, PAUL A. HENTZELL, KENNETH M. MacINTOSH, CARL N. DeTEMPLE, EDWARD F. BURKE, JR., ELVIN R. CALDWELL, AND ERNEST P. MARRANZINO, IN THEIR CAPACITIES AS AND BEING AND CONSTITUTING THE MEMBERS OF THE CITY COUNCIL OF THE CITY AND COUNTY OF DENVER; AND EARL WANKE, AS ASSESSOR OF THE COUNTY OF ARAPAHOE; AND PAUL W. WOLF, AS THE TREASURER OF THE COUNTY OF ARAPAHOE, AND LAWRENCE BAULER, DOUGLAS TUCK, JOHN H. McLAUGHLIN, JOHN E. CARON, CHARLES J. MACKET, GLEN H. ADAMS, DAVID R. MILEK, DONALD R. OLSON, AND JOSEPH DELIO,

Defendants in Error.

Error to the District Court of the County of Arapahoe State of Colorado

HONORABLE WILLIAM GOBIN Judge

ANSWER BRIEF OF DEFENDANTS IN ERROR

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No.23614

IN THE

SUPREME COURT

OF THE

STATE OF COLORADO

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO; SHERIDAN SCHOOL DISTRICT NO. 2, ARAPAHOE COUNTY, COLORADO, AND BOB D. McAFEE, EDNA JEANNE McAFEE, JAMES E. JACKSON, DENMER A. WELLS, JR., DOROTHY M. WELLS, JACK O. BANKS, DOROTHY BANKS, JOHN L. DORLAC, JR., AND JUANITA J. DORLAC, Plaintiffs in Error, vs. THE CITY AND COUNTY OF DENVER, A MUNICIPAL CORPORATION; THE CITY COUNCIL OF THE CITY AND COUNTY OF DENVER; ROBERT B. KEATING, JOHN F. KELLY, IRVING S. HOOK, PAUL A. HENTZELL, KENNETH M. MacINTOSH, CARL N. DeTEMPLE, EDWARD F. BURKE, JR., ELVIN R. CALDWELL, AND ERNEST P. MARRANZINO, IN THEIR CAPACITIES AS AND BEING AND CONSTITUTING THE MEMBERS OF THE CITY COUNCIL OF THE CITY AND COUNTY OF DENVER; AND EARL WANKE, AS ASSESSOR OF THE COUNTY OF ARAPAHOE; AND PAUL W. WOLF, AS THE TREASURER OF THE COUNTY OF ARAPAHOE, AND LAWRENCE BAULER, DOUGLAS TUCK, JOHN H. McLAUGHLIN, JOHN E. CARON, CHARLES J. MACKET, GLEN H. ADAMS, DAVID R. MILEK, DONALD R. OLSON, AND JOSEPH DELIO, Defendants in Error.	Error to the District Court of the County of Arapahoe State of Colorado HONORABLE WILLIAM GOBIN Judge

ANSWER BRIEF OF DEFENDANTS IN ERROR

INTRODUCTION

In order to avoid being unnecessarily repetitious in regard to the Answer Brief of the Intervenor-Defendants and their Introduction, Supple-

mental Statement of Facts, Arguments, and citations contained therein, we hereby adopt by reference the entire Answer Brief of the Defendant-Intervenors.

The parties will be referred to by name or by the position they occupied in the trial court. For the purpose of this brief, we will refer to the Plaintiffs in Error as the Plaintiffs; to the Defendant-Intervenors in Error as the Intervenors; and the Defendants in Error as the Defendants. The last category excludes Earl Wanke as the Assessor of the County of Arapahoe and Paul W. Wolf as the Treasurer of the County of Arapahoe, who were named Defendants in the original proceedings, and who failed to enter an appearance therein either in person or by counsel. The last category also excludes Lawrence Bauler, Douglas Tuck, John H. McLaughlin, John E. Caron, Charles J. Macket, Glen H. Adams, David R. Milek, Donald R. Olson, and Joseph Delio who are the Defendant-Intervenors.

The case was presented below as what has now become a routine attack on an annexation of territory to Denver under a more or less stock complaint.

SUPPLEMENTAL STATEMENT OF THE CASE

For the purpose of this Brief the subject territory or area of this action will be referred to herein as the Fort Logan Annexation or the Subject Territory.

The Subject Territory generally is bounded on the North by the City and County of Denver, on the West by the County of Jefferson, on the South by the Town of Bow-Mar and the City of Littleton, and on the East by the Town of Sheridan and the City of Englewood. The contiguity of this area, except as to Denver, to Jefferson County and the Incorporated Communities in Arapahoe County, is not signigicant in this proceeding, however, it is merely descriptive of the area involved inasmuch as in the Plaintiffs' Brief the area was described as being completely surrounded by the County of Arapahoe.

None of the Plaintiffs, with the exception of the County of Arapahoe as owner of roads, streets, and public ways, is the owner of property within the described area nor were any of the individually named Plaintiffs residents of the area at the time of the circulating of the petition for annexation nor at the time of filing of the action in the District Court.

Reference has been made in Plaintiffs' Brief and in Intervenors' Answer Brief to Tax Exempt Lands and School Lands the former refers, apart from water courses, streets and public roads, to land owned by the City of Denver, privately owned tax exempt school land and Fort Logan National Cemetery. The latter reference to School Lands is to privately owned school land which is tax exempt and not a part of any public tax supported school system.

No counterpetitions of any nature whatsoever

were filed or have been filed against this annexation.

Reference herein will be made to the Old Annexation Statute and to the New Annexation Statute. The Old Annexation Statute we refer to is Colorado Revised Statutes of 1963, Chapter 139, Article 10, Sections 1 through 9, as amended. Reference to the New Annexation Statute will refer to the Municipal Annexation Act of 1965, C.R.S. 1963, Chapter 139, Article 21, Sections 1 through 23.

The Subject Territory was annexed under the Old Annexation Statute.

SUMMARY OF ARGUMENT

A. The City Council did make the required findings and although not required made them a matter of record in the Resolution accepting the petitions and in the Ordinance accomplishing the Subject Annexation; the Council fully complied with jurisdictional requirements of the annexation statute.

B. The Court has not inverted the burden of proof to sustain the annexation and the trial court did not fail to exercise its jurisdiction properly in the complete failure of proof attacking the validity of the annexation.

C. The annexed territory has contiguity to the annexing municipality as required by statute; the annexation statute contains no prohibition con-

cerning the use of tax exempt territory to acquire contiguity.

D. The legal description used in the petitions for annexation are valid and in compliance of the annexation statute even though some of the subdivision plats were filed in Arapahoe County and others in the annexing municipality. The use of said subdivision plats within the area described in the annexation map is not prohibited by statute.

E. The enactment of a new law subsequent to the annexation in question, relating to school districts under certain circumstances, does not have retroactive force as a violation of public policy and is wholly and completely immaterial in this case.

F. The apportionment decisions of the United States Supreme Court are completely immaterial herein inasmuch as they are completely inapplicable to the Plaintiffs' raising the issue herein.

ARGUMENT

A. THE CITY COUNCIL DID MAKE THE REQUIRED FINDINGS AND ALTHOUGH NOT REQUIRED MADE THEM A MATTER OF RECORD IN THE RESOLUTION ACCEPTING THE PETITIONS AND IN THE ORDINANCE ACCOMPLISHING THE SUBJECT ANNEXATION; THE COUNCIL FULLY COMPLIED WITH JURISDICTIONAL REQUIREMENTS OF THE ANNEXATION STATUTE.

C.R.S. 1963, 139-10-3(2), provided that:

"(2) If such legislative body shall find that the petition and the documents attached thereto meet the requirements of this section, the annexation of such territory to such city, city and county, or incorporated town shall be accomplished, when no qualified counterpetition has been filed as provided in section . . . ."

Nowhere in the statute is there a requirement that these findings be made a matter of record, however, City Council in its Resolution accepting the annexation petitions did provide the following language:

"NOW, THEREFORE,

"BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

"Section 1. That the Council of the City and County of Denver hereby finds and determines that said petition for annexation and the documents accompanying the same meet the requirements of Colorado Revised Statutes 1963, Section 139-10-3 and comply with the Statutes of the State of Colorado, and that the territory described in said petition for annexation to and by the City and County of Denver is eligible for annexation to and by the City and County of Denver under the terms and provision of Colorado Revised Statutes 1963, Sections 139-10-1 and 139-10-2." (Exh. 7, f. 466.)

In the Ordinance approving and accomplishing the Subject Annexation, the Council of the City and County of Denver made the following findings within the body of said Ordinance:

> "WHEREAS, by Resolution No. 32, Series of 1965, passed by the Council on or about August 3, 1965, the said Council found and determined that said petition for annexation and the documents accompanying the same met the requirements of Colorado Revised Statutes 1963, Section 139-10-3, and complied with all the requirements of the Statutes of the State of Colorado and that the territory described in said petition for annexation to and by the City and County of Denver was eligible for annexation to and by the City and County of Denver under the terms of Colorado Revised Statutes 1963, Sections 139-10-1 and 139-10-2, and accepted and approved said petition; and, WHEREAS, ..." (Exh. 1-C, f. 454.)

In the pre-trial order it was stipulated that the Defendant City and County of Denver would cause to be prepared copies of those entries in the minutes of the City Council of the City and County of Denver having to do with the annexation in question. The minutes of City Council relating to the Subject Annexation were produced and were offered into evidence by the Plaintiffs as Exhibit 8 (f. 467). The Exhibit 8 was introduced by the Plaintiffs to establish that the record does not show the findings allegedly required by the annexation statute. We contend that the minutes of the City Council are merely an abstract of the

proceedings before Council at any given session and are not for the purpose of recording findings.

The New Annexation Statute which was effective after the Subject Annexation provides that under certain types of annexations, hearings will be held and recorded, specifically C.R.S. 1963, 139-21-8(2) and (3).

> "(2) All proceedings at the hearing and any continuances thereof shall be recorded but the recorder's notes need not be transcribed unless proceedings for judicial review initiated as provided in Section 139-21-15.
>
> "(3) The Board of Trustees of an incorporated town may dispense with the reporting of the hearing as in this section provided and substitute in lieu thereof minutes summarizing the presentation of each speaker and describing the proceedings of the hearing . . ." (Emphasis supplied)

The foregoing provisions are required in hearings only under the New Annexation Statute. Under the applicable statute here, nowhere is such a requirement made even where a hearing is required.

The findings and determination made in the Resolution Accepting the Annexation Petitions and in the Ordinance accomplishing the Subject Annexation are contained in the statute and also contained in the 154 separate petitions which were approved and accepted by City Council. (Exh. 1-A, f. 452.)

Each of said Annexation Petitions contained, in addition to the correct legal description of the Subject Territory and other matters, the following allegations:

"And in support of the said petition, your petitioners show to the City Council:

"1. That said territory is eligible for annexation to the City and County of Denver pursuant to the terms of Section 139-10-2, Colorado Revised Statutes, 1963, as amended;

"2. That the above described territory is not embraced within any City, City and County, or incorporated town;

"3. That it abuts upon and is contiguous to the City and County of Denver in a manner which will afford reasonable ingress and egress thereto;

"4. That not less than one-sixth of the aggregate external boundaries of the said unincorporated territory coincide with existing boundaries of the City and County of Denver;

"5. That the noncontiguous boundaries of the territory to be annexed coincide with existing block lines or center lines of established streets, roads, highways, or alleys, or with governmental subdivision lines for purposes of identification wherever possible;

"6. That no territory owned by the same

owner or owners, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate is being divided hereby into separate parts of parcels without the written consent of the said owner or owners thereof;

"7. That your petitioners are the sole and absolute owners in fee simple of over 50% of the area of said unincorporated territory and comprise a majority of the landowners residing in said unincorporated territory;

"8. That your petitioners are the owners in fee simple of real property in the territory proposed to be annexed who have in the next preceding calendar year become liable for a property tax thereon;

"9. That the resident addresses of your petitioners accompany their signatures below, together with the dates of signing;

"10. That attached to this petition is the affidavit of the circulator of this petition that each signature hereon is the signature of the person whose name it purports to be;

"11. That each of your petitioners has indicated by his or her signature whether he or she is a qualified elector in addition to being a land owner in said territory.

"This petition is accompanied with four copies of a map or plat of the territory to be an-

nexed, showing with reasonable certainty the territory to be annexed, the boundaries thereof, and its relationship to the established corporate limits of the City and County of Denver."

The Notice of Petition for and Proposed Annexation (Exh. 5A, f. 465) required by Statute also contained the above allegations, regarding the eligibility for annexation of the Subject Territory, as required by Statute.

Although not required by statute, Council has made findings of record in three of the aforementioned exhibits: the Resolution accepting the annexation petitions, the Notice of Petition for and Proposed Annexation and in the Ordinance accomplishing the annexation. The Colorado Supreme Court, in an annexation matter considering the statute that requires the annexing city's legislative body to determine whether the petitions meet the requirements of statute, stated the following:

> "The most common test is to determine whether the function and the consideration involves the exercise of discretion and requires notice and hearing. If these elements are present the 'finding' is generally a quasi-judicial act; if any of them are absent it is generally an administrative act . . . .
>
> "The requirement that if the legislative body 'shall find' upon examination of the petition that it 'meets the requirement' of the statute other procedures should follow does

> not involve a hearing upon notice in an adversary proceeding, in which a judicial or quasi-judicial 'finding' is called for. The 'finding' of compliance with the statute, as a preliminary step in annexation proceedings, is no more than an administrative or ministerial conclusion of fact upon which the legislative power to act is dependent, and this 'finding' would necessarily be made by the legislative body whether the statute required it or not." City of Englewood vs. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The statute in question requires Notice of Filing of the Annexation Petition, however, does not require a hearing, therefore, one element in making this a judicial or quasi-judicial "finding" is missing. The finding required in the statute is no more than an administrative or ministerial conclusion of fact and need not be made of record.

B. THE COURT HAS NOT INVERTED THE BURDEN OF PROOF TO SUSTAIN THE ANNEXATION AND THE TRIAL COURT DID NOT FAIL TO EXERCISE ITS JURISDICTION PROPERLY IN THE COMPLETE FAILURE OF PROOF ATTACKING THE VALIDITY OF THE ANNEXATION.

The Trial Court has not inverted the burden of proof in this case and the Intervenors' brief contains many citations from throughout the country regarding the Doctrine of Presumption of Validity of an Annexation Ordinance.

In the case of People vs. County Court, 137 Colo. 436, 326 P.2d 372 (1958), this Court acknowledged that in proceedings in the proper tribunal, the presumption of validity of an Annexation Ordinance existed in this jurisdiction.

In a very recent Colorado case, Westminster, et al. vs. The District Court of Adams County, Supreme Court No. 23640, Advance Sheet for November 18, 1968, is another recognition of this Court of the aforesaid principle. In that case this Court held that Courts were precluded from use of injunctions in order to prevent the annexed territory from becoming part of the Annexing Municipality, in view of the legislative prohibition, 1965 Perm. Supp. C.R.S. 1963, 139-21-16(1), thereby affirming the validity of the Annexation Ordinance until the opponents had established the invalidity of the Ordinance in a proper review:

> "We are persuaded that the legislature was required to provide the specific guidelines that it did pending review proceedings, lest the disputed territory be left suspended in some no-man's land, with the citizenry of the territory left without clearly defined governmental services or obligations to any governmental entity."

The Plaintiffs herein totally and completely failed in their obligation to present evidence to rebut the presumption of validity and to shift the burden of going forward with evidence to the Defendants and the Intervenors.

C. THE ANNEXED TERRITORY HAS CONTIGUITY TO THE ANNEXING MUNICIPALITY AS REQUIRED BY STATUTE; THE ANNEXATION STATUTE CONTAINS NO PROHIBITION CONCERNING THE USE OF TAX EXEMPT TERRITORY TO ACQUIRE CONTIGUITY.

The allegation that the territory had no contiguity, or that there is no finding of contiguity on the part of City Council, has been rebutted and overcome by the documents referred to above which were introduced as exhibits in this case. First, each and every one of the Annexation Petitions, there being 154 of them, contained the allegation of contiguity. The Resolution passed by City Council Accepting the Petitions for Annexation contained a finding of compliance with the Statute specifically in reference to contiguity; the Notice of Petition for and Proposed Annexation contained reference to the Resolution wherein findings regarding contiguity were made in compliance with the pertinent Statute. The Ordinance contained a reference to the pertinent Statutes in a statement that the Ordinance was in compliance with the requirements of the State Statutes which referred to the contiguity requirement.

Furthermore, the Statute requires the filing of annexation petitions with the legislative body accompanied by four copies of a map or plat of the territory proposed to be annexed. C.R.S. 1963, 139-10-3(1) provided:

". . . . the petition shall be accompanied by

four copies of a map or plat of such territory showing with reasonable certainty, the territory to be annexed, the boundaries thereof, and its relationship to the established corporate limits of the municipality to which said territory is proposed to be annexed. . . ." (Emphasis supplied)

The "accompanying documents" referred to in the Resolution and in the Ordinance refer only to the Annexation Plat or Map that were required by the Annexation Statute. It is the contention of the Defendants that in accepting the Annexation Petitions and the "accompanying documents", the Council of the City and County of Denver did find the contiguity, as required by the Statute, existed. The above mentioned "accompanying documents" (the Maps), Exh. 1-B (f. 453) show the Subject Territory and its contiguity to the Annexing Municipality.

Further, said Maps also contain a scale to indicate the distances represented therein, whereby any person inquiring as to distances between any given points in the Map, can determine this with a reasonable degree of accuracy by reference thereto.

There was no evidence presented at the trial to dispute distances and contiguity. The statute does not require that distances be shown on the Annexation Map. The statutory requirement here previously cited, 139-10-3:

". . . . the petition shall be accompanied by

four copies of a map, or plat, of such territory showing, with reasonable certainty, the territory to be annexed, the boundaries thereof, and its relationship to the established corporate limits to the municipality to which said territory is proposed to be annexed and upon material and of a suitable size for recording or filing in the various offices required under this section." (Emphasis supplied)

The above section of the statute refers to map or plat. It is the contention of the Defendants that the word "plat" is generally used and referred to with respect to Subdivision Plats or the platting of streets and alleys, however, here it is urged that the word "plat" be interpreted as meaning a "map" because of the other provisions set forth in the Statute, that is, the requirement that the territory be shown with "reasonable certainty", and its relationship to the corporate limits to which the territory is proposed to be annexed. It appears that the only specific requirement made by the statute is that the plat or map be upon material and of suitable size for recording or filing in the various offices required under this section.

In an annexation case wherein the statute required that the petitions presented to City Council must be accompanied by a "Survey" and plat, Hughes et al. vs. City of Carlsbad, 203 P.2d 995 (1949), the Supreme Court of the State of New Mexico said:

". . . . But the city council, as already shown

in the resolution for annexation, had found that the area annexed is chiefly valuable by reason of its adaptability for urban purposes and that when combined with the City of Carlbad, the annexed area constitutes but a single community unit. The reasonableness of the extension of corporate boundaries is to be determined the considering the annexed area as a whole. 'The question is not whether it is reasonable in each and every part.' 1 McQuillin Municipal Corporations, Rev. Ed., 809. And the power to annex being a legislative function, in exercising that power great latitude must necessarily be accorded the legislative discretion, 'and every reasonable presumption in favor of the validity of its action must be indulged.' . . . ."

". . . .

" 'With reference to whether the City has complied with the requirements of the annexation statute under which it has acted, the only question that can be raised is whether a survey was presented along with the petition. Words must be construed according to the general sense of the act wherein used. A survey in one instance might mean a survey by use of a transit, and chains on the line; in another, it can be such a description furnished by reference to permanent monuments and natural objects as to definitely define the premises referred to. It can be by determination, by measure or by reference to boundaries which are permanently fixed and are definitely known

> and which can be ascertained. It is rather in the latter sense that I believe the word is used in this section, since the meaning of it is to delineate or to mark out the particular territory which is to be annexed and to become a part of the city so that the city may know and the inhabitants of the territory may know under what jurisdiction they then fall.' " (Emphasis supplied)
>
> ". . . . There is no requirement for filing a 'survey.' Since a plat represents an ocular view of a survey -- a visual demonstration of the work done -- where every purpose of either a survey or plat has been achieved, as here, we think it would sacrifice substance to form to say there had not been substantial compliance with the statutory requirement in this particular. We hold with the trial judge that there has been." (Emphasis supplied)

The case of City of Pueblo et al. vs. Stanton et al., 45 Colo. 523, 102 Pac. 512 (1909), the factual situation was that the City attempted to use intervening unannexed city property or land for contiguity to create an enclave situation in order to annex certain territory under the then existing "enclave" statute. In other words, the City attempted to "leapfrog" over unannexed city owned property to create the "enclave". The Colorado Supreme Court in that case, in effect said, it was improper to use city owned unannexed land to create the enclave then annex under the enclave statute, however, the Court in-

dicated that the territory could be annexed as contiguous territory under other provisions of the statute. It appears that in the Stanton case the attempt by the City of Pueblo was to use un-annexed city land to create the enclave in order to avoid other procedures of annexation which required referring the matter to the qualified electors of the City.

There is nothing in the statute that prohibits the use of tax exempt land for the purpose of contiguity. On the contrary, annexations generally use tax exempt land for contiguity and the boundary line, that is, most annexations use natural courses, such as rivers, lakes, public roads and streets, which are generally tax exempt, for contiguity and boundaries.

The New Annexation Statute C.R.S. 1963, 139-21-3(2) provides as follows:

> "That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity will not be affected by the existence of a platted street or alley, or a public or private right-of-way, or a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial water way between the annexing municipality and the land to be annexed." (Emphasis supplied)

Most of the items enumerated in the New Annexation Statute, which is inapplicable in this case,

contemplate that the contiguity boundary may be tax exempt by its nature.

As stated in the Supplementary Statement of the Case, the tax exempt school lands referred to in the Plaintiffs' brief are not school lands owned by Sheridan School District No. 2, one of the Plaintiffs herein, nor are they owned by any other public school system but are privately owned tax exempt schools. We cannot find any prohibition against the use of tax exempt land whether owned by the United States Government, the City or privately owned.

D. THE LEGAL DESCRIPTION USED IN THE PETITIONS FOR ANNEXATION ARE VALID AND IN COMPLIANCE OF THE ANNEXATION STATUTE EVEN THOUGH SOME OF THE SUBDIVISION PLATS WERE FILED IN ARAPAHOE COUNTY AND OTHERS IN THE ANNEXING MUNICIPALITY. THE USE OF SAID SUBDIVISION PLATS WITHIN THE AREA DESCRIBED IN THE ANNEXATION MAP IS NOT PROHIBITED BY STATUTE.

The case of People Ex Rel vs. Anderson, 112 Colo. 558, 151 P.2d 972 (1944), The Colorado Supreme Court in a matter involving the validity of an annexation stated the following at page 564:

> "/5/ The contention that the ordinance was void because the annexed territory had theretofore been platted as a subdivision of Arapahoe county and had not been vacated, is without merit. The allegations of respondents' answer and the attached plats show conclusively

that in so far as the landowners within the annexed territory are concerned, the plat as made by the city, laying out blocks, streets, alleys and roads, coincides fully with the plat of the subdivision of Arapahoe county. If such be a re-platting of the land, it is in name only, and since the rights of landowners are in no wise changed or affected there was no need for a vacation or for a consent of the landowners that there be one . . . ." (Emphasis supplied)

It is obvious that the petitioners who signed the petitions for annexation used the legal description of their property in the same manner by which they hold title thereto, accordingly, if the plats are void as alleged by the Plaintiffs, the petitioners' titles to said properties are also defective. Furthermore, there was no other means of describing the real property except through the use of the plats that the Plaintiffs allege are defective.

C.R.S. 1963, 139-10-3 provides as follows in the last sentence of this section:

". . . . The annexation of such territory to such city, city and county, or incorporated town shall be complete on the effective date of the annexation ordinance for all purposes except that of general taxation in which respect it shall not become effective until on and after the first day of January, next ensuing." (Emphasis supplied)

Considering the annexation history of the Subject Territory, it is not unusual that the various Subdivision Plats were filed in different counties, however, this does not affect the validity of the plats or the legal descriptions based on them. The Annexation Map, Exh. 1-B (f. 453), clearly shows where these Subdivisions are located within the Subject Territory.

E. THE ENACTMENT OF A NEW LAW SUBSEQUENT TO THE ANNEXATION IN QUESTION RELATING TO SCHOOL DISTRICTS UNDER CERTAIN CIRCUMSTANCES DOES NOT HAVE RETROACTIVE FORCE AS A VIOLATION OF PUBLIC POLICY AND IS WHOLLY AND COMPLETELY IMMATERIAL IN THIS CASE.

The contention of the Plaintiffs that the subject annexation is impermissible as being a direct attempt to thwart the policy of the law for the protection of school districts by citing a subsequently enacted law is wholly irrelevant and immaterial in this case. The Defendants herein have, in two instances, cited the new and subsequent annexation law as a point in comparison of the provisions thereof but not for the purpose of establishing public policy and relating it back.

It is obvious that the new statute regarding schools under certain circumstances is completely immaterial to this case and is an attempt to infer that Denver has taken $5,000,000 worth of tax property and 800 students from the school district. If this be true, the school district has benefited from the fact that they have not had to

provide for 800 students for the period of time from the first annexation and have been relieved of the burden of building new facilities to accommodate these students inasmuch as there has been no showing that any student within the Subject Annexation has ever attended Sheridan School District schools. The Subject Territory, at the point of the first or initial annexation, was largely undeveloped territory, however, since that period of time the school population has grown to the alleged 8,00 students within the area and these students have continuously attended Denver Public Schools since the first annexation.

F. THE APPORTIONMENT DECISIONS OF THE UNITED STATES SUPREME COURT ARE COMPLETELY IMMATERIAL HEREIN INASMUCH AS THEY ARE COMPLETELY INAPPLICABLE TO THE PLAINTIFFS' RAISING THE ISSUE HEREIN.

The Intervenors' Answer Brief contains a complete and comprehensive answer relating to the apportionment decisions and the bearing they have on the subject annexation, therefore we will avoid unnecessary repetition and will adopt their argument and their citations therein.

In the case of Detroit Edison Company et al. vs. East China Township School District No. 3, et al., United States District Court, Eastern District Michigan, 247 Fed. Supp. 296 (1965), in a suit by property owners for declaration that an annexation of two school districts to school district in which their property was situated violated

Federal Constitution, the Court stated the following:

> "/1/ Any alteration of a municipal boundary is a matter within the complete discretion of the state and not confined by any rights secured by the Federal Constitution. Hunter vs. City of Pittsburgh, 207 U.S. 161, 28 S. Ct. 40, ..."

In the Detroit Edison Company vs. East China Township School District, supra, in commentary about reapportionment case the Court discussing the Lucas case /Lucas vs. 44th General Assembly of the State of Colorado, 377 U.S. 713, 744, 84 S. Ct. 1459, (1964)/, stated:

> "Far from implying a change in the Hunter doctrine the reapportionment cases seem to reaffirm it . . . ."

The only persons who may stand to lose representation by the change of boundary involved herein are the residents of the annexed territory whose representation may have been temporarily "diluted". However, the individual plaintiffs herein who reside in the county from which the territory was detached are enhanced inasmuch as they have more representation than they had prior to the change of the boundary in this annexation.

CONCLUSION

In conclusion, the Defendants join the Inter-

venor Defendants and respectfully urge this Court to sustain and affirm the judgment of the trial court.

Respectfully submitted,

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